

Ranjit Singh Vs. State

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Court : Allahabad

Decided On : Mar-30-1979

Reported in : 1979CriLJ1140

Judge : M.P. Saxena, J.

Appellant : Ranjit Singh

Respondent : State

Judgement :

ORDER

M.P. Saxena, J.

1. Ranijt Singh has filed this revision application against the judgment and order dated 28-10-1976 passed by the IInd Addl. Sessions Judge, Nainital.

2. Briefly stated, the facts are that on 9-8-1974 the Supreme Court of India in Criminal Misc. Petn. No. 1074 of 1974 Criminal Appeal No. 32 of 1972 released Boota Singh son of Kakka Singh on parole for a period of three months. The order read as follows:

Boota Singh son of Kakka Singh be released on parole for a period of three months on the ground of ill health on his furnishing to the satisfaction of the District Magistrate, Nainital and this Court doth further order that this order be punctually

observed and earned into execution by all concerned.

3. As Boota Singh was confined in Haldwani Jail the order was received by the District Magistrate, Nainital on 12-8-1974. On 17-8-1974 the counsel for Boota Singh moved an application before the Sessions Judge, Nainital for directing the Chief Judicial Magistrate Nainital, to release the accused on bail. On the same day the learned Sessions Judge directed that the bonds be furnished to the satisfaction of the Chief Judicial Magistrate, Nainital, as the District Magistrate had no power under the new Code. On 19-8-1974 the Chief Judicial Magistrate appears to have passed the following order:

Let Boota Singh furnish two local and reliable sureties for Rs. 5,000/- each and a personal bond for the like sum for release on parole for three months as ordered.

4. On the same day i. e. 19-8-1974 the revisionist and Amar Singh stood sureties for Boota Singh and undertook to produce him on 18-11-1974 i. e. on the expiry of three months from 19-8-1974; failing which they undertook to pay a sum of Rs. 5,000/-each to the State of Uttar Pradesh. Boota Singh was released from Haldwani jail but did not appear on 18-11-1974. On 19-11-1974 the Chief Judicial Magistrate directed a bailable warrant of arrest to be issued against him and further ordered that notice be sent to his sureties to produce him on 9-12-1974. On this date neither Boota Singh nor his sureties put in their appearance, hence the Chief Judicial Magistrate passed an order forfeiting surety bonds; notices under Section 460 Cr. P.C. were issued to the sureties for 21-1-75. In the meantime one of the sureties namely Amar Singh appeared and moved an application on his own behalf as well as on behalf of the other surety stating that Boota Singh had surrendered himself in the court of the Chief Judicial Magistrate, Kapurthala, Punjab in a case under Section 411 I.P.C. He, therefore, expressed his inability to produce Boota Singh as he was detained in the jail. The Chief Judicial Magistrate Nainital sent a letter and wireless message to the superintendent District Jail, Kapurthala and to the Chief Judicial Magistrate of that place for detaining Boota Singh and to produce him before the Delhi High Court in appeal No. 22 of 1968 Delhi Administration v. Boota Singh Ors. as desired by that court. The Superintendent sub-jail Kapurthala by his letter dated 20-1-1975 informed the

Chief Judicial Magistrate, Nainital, that Boota Singh had been released on bail by the Chief Judicial Magistrate on 26-12-1974 and was not confined in jail. On 21-1-75 the sureties moved an application before the Chief Judicial Magistrate, Nainital stating that they could not produce Boota Singh as the latter was admitted in the Government Hospital, Kapurthala on account of heart trouble and he was taken into custody on 24-12-1974. They, therefore, prayed that they may be discharged. This application came up for hearing on 6-2-1975 when the sureties gave another application to the effect that Boota Singh was already released from the jail and they did not know his whereabouts and prayed for one month's time to produce him. The Chief Judicial Magistrate, granted time up to 10-2-1975 but none turned up. The sureties also failed to show any cause why the amount of the bond be not realised from them. Therefore, on 20-2-1975 the Chief Judicial Magistrate, Nainital, directed the sureties to pay Rs. 5,000/-each as they had failed to produce Boota Singh according to the terms of the bonds. He also passed an order that warrants for realisation of this amount be issued. Feeling aggrieved by this order both the sureties filed an appeal and pressed only one point in the lower appellate court viz. that there was no personal bond by Boota Singh and in its absence the bonds furnished by the sureties were not enforceable. This contention was negatived by the lower appellate court and the appeal was dismissed. Now Ranjit Singh alone has filed this revision application.

5. The learned Counsel for the revisionist has pressed three main points before me. In the first place it is argued that the Chief Judicial Magistrate had forfeited the bonds dated 19-12-1974 while the learned Sessions Judge has referred to the bonds dated 19-8-1974. There is therefore, ambiguity about the bonds purported to have been executed by the revisionist and it cannot be said as to which bonds were actually forfeited. The venue for this argument was opened by the order of the Chief Judicial Magistrate in which he made a reference to the bonds dated 19-12-1974. Obviously the date mentioned was wrong. The bonds were furnished on 19-8-1974 as mentioned in the judgment of the lower appellate court. The judgment of the Chief Judicial Magistrate itself shows that Boota Singh was released on parole for a period of three months. An application to furnish bonds was moved from his side on 17-8-1974. The bonds were furnished on 19-8-1974 and it is for this reason that the sureties gave out in the bonds that they shall

produce Boota Singh on 18-11-1974, i. e. on the expiry of three months from 19-8-1974. Therefore, there can be no manner of doubt about the date of the bonds and no advantage can be taken from the clerical mistake existing in the order of the Chief Judicial Magistrate,

6. The second contention of the learned Counsel for the revisionist is that the Chief Judicial Magistrate had passed a single order forfeiting the surety bonds and directing its amount to be realised as penalty which was illegal. This contention is based on the operative portion of the order dated 20-2-1975 passed by the Chief Judicial Magistrate, Nainital, which reads as follows:

I, therefore, finally order that the surety bond dated 19-12-1974 of Amar Singh and Ranjit Singh be forfeited... Let warrants for realisation of the penalty of Rs. 5000/- be issued against the aforesaid sureties Amar Singh and Ranjit Singh.' It is true that the learned Chief Judicial Magistrate passed a composite order but in the circumstances of this case no advantage can be derived from it. In the body of the order the Chief Judicial Magistrate had himself observed that Boota Singh was released on parole for a period of three months and was to appear on 18-11-1974. He failed to appear on that date. Therefore, the bonds stood forfeited in the eye of law and no order to this effect was necessary. Moreover, notices were sent to the sureties to produce Boota Singh on 9-12-1974 and as they were unsuccessful in doing so the bonds were formally forfeited on that date as observed by the Chief Judicial Magistrate in his order. If the bonds were forfeited on 9-12-1974 they could not be forfeited again on a subsequent date. It is thus clear that the bonds stood forfeited on 18-11-1974 and in any case on 9-12-1974 and the order of realisation was passed on 20-2-1975.

7. It is also argued in this connection that no notice was issued to the sureties to show cause why the amount of the bonds be not realised from them. The order of the Magistrate makes it clear that show cause notices were duly sent to the sureties. One of them had appeared also and taken time to produce Boota Singh but in vain. He had also given out that Boota Singh was admitted in the jail at Kapurthala. On his representation a letter was sent to the Superintendent, Jail but he informed that Boota Singh had already been released. It cannot therefore, be

said that the revisionist was given no opportunity to show cause why the amount of the bond be not realised from him. As a matter of fact he did not choose to show any satisfactory cause and the order passed by the learned Chief Judicial Magistrate does not suffer from any serious infirmity.

8. Lastly it is urged that no personal bond was taken from Boota Singh and in its absence the bonds furnished by sureties could not be enforced. In this connection reliance is placed on the case of *Bekaru Singh v. State of UP* : [1963]1SCR55 in which it was held that Sub-section (1) of Section 499 Cr. P.C. provides that before any person is released on bail a bond must be executed by such person and bonds be also executed by sureties for the attendance of that person in court.' There is no observation in this case as to what will be the position of the bonds furnished by sureties if no bond is executed by accused. On the other hand there are several decisions of this Court laying down that the surety bonds can be enforced even if there is no bond by the accused. In *Sripal Singh v. State* 1953 Cri LJ 446 a learned single Judge of this Court held that 'a bail bond by the surety and a personal bond by the accused under Section 499 Cr. P.C. are contracts independent of each other and the fact that the person released on bail did not himself sign the bond for his attendance when called upon to do does not make the bond executed by the surety invalid. Hence on forfeiture of the bond the liability of the surety can be enforced under Section 514. 'Reliance was placed on a Division Bench decision of this Court in *Abdul Aziz v. Emperor* ILR (1946) All 238 in which it was held that the surety does not guarantee the payment of any sum of money by the person accused who is released on bail but guarantees the attendance of that person. He is a surety for attendance and not a surety for payment of money. His contract and the contract of the person released on bail are independent of each other and the absence of bond by the person released on bail does not render the bond executed by the surety invalid.' A number of other cases decided by this Court were also relied upon. This view was reiterated again in *Bahar Husain v. State* : AIR1956 All78 . Recently this question came up for consideration before the Supreme Court in *Moti Ram v. State of Madhya Pradesh* 1978 SC Cri R 438 in which it was held that the word 'bail' in Section 441(2) of the new Code means as own bond of the accused or the surety bond or both. There is nothing in law to prevent him from being released on bail on furnishing his own

bond or bonds of the sureties. In this view of the matter the bonds furnished by the sureties in this case cannot be held to be illegal or unenforceable.

9. Lastly, the learned Counsel for the revisionist has prayed for reduction of the amount of the penalty to be realised from the revisionist on the ground that he could not produce Boota Singh on account of unavoidable circumstances. These circumstances were his admission in the hospital as a patient of heart trouble and his arrest in Kapurthala. There is absolutely no ground for reduction because there is nothing on the record to warrant that Boota Singh was admitted in the hospital as a heart patient and it was not possible for him to appear before the Chief Judicial Magistrate, Nainital. Secondly, there is no material on the record to show that he was taken into custody and sent to jail in Kapurthala before 18-11-1974 rendering it impossible for him to appear in Nainital. If he was arrested subsequently that could not be a mitigating circumstance. I, therefore, find absolutely no reason For reduction of the amount.

10. The revision application is accordingly rejected.

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